

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: June 28, 2004

TO : Gerald Kobell, Regional Director  
Region 6

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice 530-6033-6000  
530-6033-8400

SUBJECT: Northco Vocational Training Center 530-6033-9200  
Case 6-CA-33919 530-6050-6625

This Section 8(a)(1) and (5) case was submitted for advice on whether the Employer unlawfully refused to implement the terms of a collective bargaining agreement when the Union failed to obtain employee ratification.

We conclude that since employee ratification was an express condition precedent of the parties' tentative agreement, the Employer was under no obligation to implement the remaining terms of that agreement.

### FACTS

On July 11, 2003 after protracted negotiations, Northco Vocational Training Center (the Employer) and the United Steelworkers of America, AFL-CIO (the Union) entered into a "tentative agreement" for a new collective-bargaining contract. Among its terms, the tentative agreement provided under Article XXV "TERM OF AGREEMENT" that the new agreement "would become effective upon employee ratification" and would expire three years thereafter.

The Union unsuccessfully made three attempts to obtain employee ratification of the contract. After failing to gain the requisite ratification, the Union informed the Employer of its view that, inasmuch as contract ratification procedures are a permissive subject of bargaining, it wished to unilaterally delete the ratification term from the tentative agreement and bind the Employer to all other terms. The Employer refused to be bound to the terms of the tentative agreement, arguing that the condition precedent failed and there was no effective contract.

In an effort to resolve the ratification issue and agree on the terms of a collective bargaining contract, the parties attended several negotiation sessions in the presence of a mediator. At different points in the resumed negotiating process, both the Union and Employer submitted new proposals with substantially differing terms and conditions of employment from those contained in the July 11 tentative agreement. Thus far, the parties have been unable

to reach agreement, and the Union continues to maintain that the Employer is bound by the July 11 tentative agreement.

#### ACTION

We conclude that since employee ratification was an express condition precedent of the parties' agreement, the employer is under no obligation to apply the remaining terms of the collective bargaining agreement when the Union failed to meet the condition of ratification.

It is well established that ratification agreements, although permissive topics of bargaining, are enforceable if agreed upon by both parties.<sup>1</sup> The Board has addressed the effect of ratification as a condition precedent on collective bargaining agreements. In Hertz Corporation<sup>2</sup> the Board affirmed the ALJ's conclusion that the Employer was not bound to a collective-bargaining agreement where the parties had agreed to employee ratification as a condition precedent to the implementation of the agreement. When the union subsequently failed to gain the requisite ratification and attempted to bind the Employer to the remaining terms of the tentative agreement the Board held that, "because the Union has never complied with the parties' agreement to ratification as a precondition to the implementation of the substantive terms of their collective-bargaining agreement, the [employer] never was obliged to put those terms into effect."<sup>3</sup>

The Board's holding in Hertz applies directly to the facts in this case. Here, the tentative agreement between the Employer and the Union expressly and unambiguously provided for employee ratification. As in Hertz, after failing to gain ratification, the Union cannot subsequently withdraw the ratification provision and force the Employer to accept the contract's remaining agreed upon terms.<sup>4</sup> Given that the express condition precedent requiring employee ratification failed, the Employer is under no

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<sup>1</sup> NLRB v. Borg Warner, 356 U.S. 342, 349 (1958).

<sup>2</sup> Hertz Corp., 304 NLRB 469 (1991).

<sup>3</sup> Id. at 469.

<sup>4</sup> Ibid. ("the Union's subsequent repudiation of the ratification agreement cannot unilaterally reform the parties' agreement or return the parties to the preagreement negotiating stage.")

obligation to implement the remaining terms of the previously negotiated collective bargaining agreement.<sup>5</sup>

Accordingly, the Region should dismiss the charge, absent withdrawal.<sup>6</sup>

B.J.K.

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<sup>5</sup> See also Beatrice/Hunt-Wesson, 302 NLRB 224, 224 n.1 and 233 (1991) (where parties agreed that employee ratification of a tentative agreement was a condition precedent to a contract, when the union failed to obtain ratification "the agreement never came into existence.").

<sup>6</sup> In light of our disposition of this case, there is no need address the Employer's argument, citing Sheridan Manor Nursing Home, 329 NLRB 476 (1999), that the parties never had a meeting of the minds regarding the commencement and termination dates of the agreement.